

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6432

BILL NUMBER: HB 1253

NOTE PREPARED: Jan 9, 2013

BILL AMENDED:

SUBJECT: Underground Utility Facility Protection.

FIRST AUTHOR: Rep. Niezgodski

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: ☒ **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill provides that for purposes of the statute concerning the location and protection of underground utility facilities during excavation or demolition activities, "approximate location" of a facility means, a strip of land not more than 18 inches horizontally from the outside wall of the facility. (Current law provides that the "approximate location" of a facility means a strip of land at least four feet wide but not wider than the width of the facility.)

The bill provides that: (1) subsurface installation locating activities; and (2) the location of utilities in areas involving pavement; must be performed by a qualified person. It provides that a "qualified person" under this statute means a person who has completed a training program that meets certain minimum training guidelines and practices for utility locators.

The bill requires a utility operator to: (1) maintain a record of all as-built and record drawings for all the operator's live or active underground facilities; and (2) make such drawings available to any: (A) person providing locating services to the operator; and (B) person responsible for an excavation or demolition at a site where the operator's facilities are located; to the extent necessary for the person to perform the person's duties in compliance with the statute.

The bill provides that a utility operator that violates the statute is subject to a civil penalty in an amount not to exceed \$10,000. It provides that if a person responsible for an excavation or demolition suffers a pecuniary loss as a result of a violation of the statute, the person may bring a civil action against the person that caused the loss. (Current law provides a cause of action only for a utility operator that suffers a loss.)

Effective Date: July 1, 2013.

Explanation of State Expenditures:

Explanation of State Revenues: The bill provides that a utility operator that violates the provisions under I.C 8-1-26 is subject to a civil penalty in an amount recommended by the underground plant protection advisory committee. It requires that the penalty shall not exceed \$10,000 for each violation. This provision could increase the revenues deposited in Underground Plant Protection Account (UPPA). Any impact on the revenues is indeterminable.

The UPPA is established to provide funding for the following programs established and administered by the IURC: (1) Public awareness programs concerning underground plant protection. (2) Training and educational programs for contractors, excavators, locators, operators, and other persons involved in underground plant protection. (3) Incentive programs for contractors, excavators, locators, operators, and other persons involved in underground plant protection to reduce the number of violations. The money in UPPA does not revert to state General Fund at the end of the fiscal year.

The bill provides that if a person responsible for an excavation or demolition suffers a pecuniary loss as a result of a violation of current law as amended by this bill, the person may bring a civil action against the violator. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment Fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the automated record keeping fee (\$5) are deposited into the state User Fee Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: This bill could result in penalties incurred by municipal utilities under I.C 8-1-26-25. The requirements in the bill could also increase the administrative cost for municipal utilities. These provisions could result in increase in expenditure to the local units of government that own a municipal utility.

Explanation of Local Revenues: The bill provides that if a person responsible for an excavation or demolition suffers a pecuniary loss as a result of a violation of current law as amended by this bill, the person may bring a civil action against the person who causes the loss. If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds. The

document storage fee (\$2) is deposited into the clerk record perpetuation fund. The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per document) are charged for preparing transcripts or copies of record or certificate under seal.
- Service fee (\$10) collected from the filing party for each defendant beyond the first cited in the lawsuit.

State Agencies Affected: Indiana Utility Regulatory Commission, Office of Utility Consumer Counselor.

Local Agencies Affected: Municipal Utilities.

Information Sources:

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